THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.10484 of 1997

ORAL ORDER:

This writ petition is filed being aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Anantapur in I.D.No.122 of 1993 dated 17.10.1996 insofar as denying continuity of service and back wages to the petitioner while granting relief of reinstatement is concerned.

The facts are not much in dispute. In fact, it is admitted by the respondent-management that the petitioner was employed continuously as man-mazdoor on daily wage basis from 26.9.1985 to 15.2.1992 and his attendance was marked continuously from 1.8.1986 to 15.2.1992. Thus, he has put up six years of continuous service. However, his services were orally terminated on 15.2.1992. Therefore, petitioner raised a dispute, Ultimately, the matter was referred to the Labour Court for adjudication of the following dispute:

> "Whether the workman Syed Basha is entitled for appointment as casual mazdoor in Government Regional Press, Kurnool?".

The status of the petitioner as workman is not in dispute and the number of days he worked in the respondent organization is also not in dispute. Therefore, the Labour Court found that the petitioner had put in more than 240 days of service preceding the date of his termination, therefore, there is a gross violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') and since the same were not complied with, the Labour Court held as under:

> "It is the case of the workman that he had been employed continuously as Man-Mazdoor on daily wage basis from 26.9.1985 to 15.2.1992 and that his attendance had been marked continuously from 1.8.1986 to 15.2.1992 and thus he has put up about 6 years of continuous service. This averment has not been denied in the rejoinder. The rejoinder only reveals that the workman was not engaged after March, 1992. Thus, there is no dispute regarding the stature of the

workman and the respondent being an industry. It is not only averred in the claim statement, but also corroborated by W.W.1 that he served continuously for more than 6 years as daily rated Mazdoor and that his services have been terminated from 15.2.1992 without any notice or notice pay or compensation. W.W.1 who is his co-employee and trade union leader supported the contention of the W.W.1. It is not the case of the W.W.1 that the workman was terminated on due compliance of Section 25(F) of the I.D. Act, but he only stated that the workman himself abandoned the service. As per the rejoinder, the practice of engagement of casual labour on daily wage basis was disbanded in the office of the respondent from October, 1990 and except few persons who were engaged prior to the issue of the appropriate Government Orders and the regular posts of Sweeper and Scavenger were filed in February 1992 and consequent on their appointment, the casual labour was completely stopped from March, 1992. In spite of this specific plea, M.W.1 stated the workman abandoned service and hence his evidence cannot be relied. In spite of the directions of this Court, the records pertaining to the attendance of the workman which is in the custody of the respondent have not been produced. Further, the respondent has also not countered the averment of the petitioner about continuous service of the workman for more than 6 years and hence this has got to be recognized and in fact Ex.W1 and Ex.W2 also support their contention. Therefore, irrespective of the defects if any, in the evidence of W.W.2 which have been vehemently criticized by the learned Government Pleader that he is not Union Leader and that he is interested in the workman etc., (since the respondent failed to comply Section 25(F) of the I.D. Act, much less failed to issue any notice and also failed to pay the compensation, I have to hold that the workman is entitled for appointment as Casual Mazdoor in the respondent Press as referred. Accordingly answered".

From the above, it is clear that the petitioner had put in more than 240 days of continuous service preceding the date of termination. Therefore, I am of the opinion that the Labour Court is not right in denying the continuity

of service and back wages when there is a violation of provisions of Section 25-F of the Act. May be, the petitioner is a casual employee, but it is not the case of the respondent-management that the petitioner was engaged as and when the work was available. The respondent No.2 simply stated that the petitioner is only a casual labour, therefore, there is no necessity of complying with the provisions of Section 25-F of the Act. I am of the opinion that this is a clear case where provisions of Section 25-F of the Act are violated. Therefore, the petitioner is entitled not only for reinstatement, but also for continuity of service and back wages from the date of termination till the date of reinstatement.

Thus, the award of the Labour Court is modified to the following extent:

> "In the result, the respondent-management is directed to reinstate the petitioner into service with continuity of service, full back wages and other attendant benefits".

The writ petition is accordingly allowed. No order as to costs.

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C.V.RAMULU, J

Date: 7.2.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.10484 of 1997

7.2.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.10484 of 1997

Date: 7th February, 2006

Between:

Syed Basha

.. Petitioner

And

The Chairman-cum-Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Anantapur & another.

.. Respondents